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MICHAEL TERPIN

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL TERPIN,

Plaintiff,

v.

AT&T MOBILITY, LLC; and DOES
1-25,

Defendants.

Case No. 2:18-cv-06975-ODW-KS

**REPORT OF CONFERENCE OF
THE PARTIES PURSUANT TO
FED. R. CIV. PROC. 26(f)**

SCHEDULING CONFERENCE

Date: January 11, 2021, 1:30 p.m.
Place: 350 West 1st Street, 5th Floor,
Courtroom 5D, Los Angeles, California
90012
Judge: Honorable Otis D. Wright II

Pursuant to Fed. R. Civ. Proc. 26(f), Local Civil Rule 26-1, the Court's Scheduling Meeting of Counsel Order, and the Court's Scheduling and Case Management Order for Jury Trials, Plaintiff Michael Terpin ("Plaintiff" or "Mr. Terpin") and Defendant AT&T Mobility, LLC ("Defendant" or "AT&T") submit the following report of the conference that they conducted on October 19, 2020.

I. Matters Discussed Under Rule 26(f)

A. Rule 26(a) Disclosures.

By agreement, the parties already exchanged their respective Rule 26(a) disclosures on November 2, 2020, subject to the production of materials marked confidential which will be made upon entry by the Court of a stipulated protective order.

B. Subjects of Discovery.

The parties will conduct discovery on Plaintiff's claims in its Second Amended Complaint for (1) Declaratory Relief; (2) Unauthorized Disclosure of Customer Confidential Proprietary Information and Proprietary Network Information, Federal Communications Act, 47 U.S.C. §§ 206, 222; (3) Negligence; (4) Negligent Supervision and Training; (5) Negligent Hiring; and (6) Breach of Contract—AT&T Privacy Policy and in regard to Defendant's Affirmative Defenses as set forth in its Answer to the Second Amended Complaint.

The proposed discovery cut off, which complies with the Court's Scheduling and Case Management Order for Jury Trials ("Scheduling and Case Management Order"), is set forth below in Section IV. The parties do not propose that the discovery be conducted in phases or limited or focused to particular issues.

1 C. Changes to Limitations on Discovery.

2 Subject to each party's right to apply to the Court to grant further discovery in
3 the event that the parties do not stipulate, the parties propose the following changes
4 to the limitations on discovery under the Federal Rules of Civil Procedure and the
5 Local Rules of this Court:

6 1. Each party is entitled to pose no more than 35 interrogatories to the other
7 party.

8 Plaintiff contends that each party should be permitted to take 15 depositions.
9 Defendant contends that the ordinary limit of 10 depositions is sufficient. The parties
10 agree to further confer on the necessity of expanding the deposition limit as the case
11 proceeds.

12 D. Issues Regarding Disclosure, Discovery, or Preservation of
13 Electronically Stored Information, Including the Form or Forms in which It Should
14 Be Produced.

15 The parties do not currently anticipate any issues regarding disclosure,
16 discovery, or preservation of electronically stored information.

17 E. Additional Orders.

18 The parties will prepare and submit for the Court's approval a protective order
19 governing the production of confidential information. AT&T prepared and circulated
20 a draft of that protective order on November 20, 2020. The parties' proposals
21 regarding the Court's Scheduling Order for this matter, including the date of the
22 pretrial conference, are set forth below in Section IV.

23 **II. Matters Discussed Under Local Rule 26-1**

24 A. Complex Case

25 The parties do not believe that the Manual for Complex Litigation (current
26 edition) should be utilized or that the procedures of the Manual shall be modified.
27
28

1 B. Motion Schedule

2 See Section III(B), *infra*.

3 C. ADR

4 The parties have agreed on ADR Procedure No. 3 (private dispute resolution
5 proceeding).

6 D. Trial Estimate

7 12 Court days.

8 E. Additional Parties

9 At the current time, neither party contemplates adding other parties, but
10 reserves the right to do so under applicable substantive and procedural law.

11 F. Expert Witnesses

12 As set forth in Section IV, *infra*, and based on the proposed trial date, the
13 parties propose an expert discovery cut-off date of March 7, 2022 as per this Court's
14 template for scheduling pretrial and trial dates. Pursuant to the Court's Scheduling
15 and Case Management Order, affirmative experts shall be designated eight weeks
16 prior to that date (i.e., January 10, 2022) and rebuttal experts five weeks prior to that
17 date (i.e., January 31, 2022).

18 **III. Additional Matters Discussed Pursuant to the Court's Order Regarding**
19 **Scheduling Meeting of Counsel and Scheduling Conference.**

20 A. Proposed Written Discovery

21 See Items I(B) and I(C), *supra*. Based on the proposed trial date, the parties
22 propose a percipient/fact discovery cutoff of February 21, 2022. See Section IV,
23 *infra*.

24 B. Proposed Law and Motion Matters.

25 Each party contemplates bringing a motion for summary judgment. Based on
26 the proposed trial date (and taking into account the Court's requirement that thirty-
27 five days' notice be provided for motions for summary judgment) motions for
28 summary judgment will be filed no later than March 14, 2022 (35 days before the

1 April 18, 2022 cutoff for hearing motions) and all other motions will be filed no later
 2 than March 21, 2022 (28 days before the April 18, 2022 cutoff for hearing motions),
 3 subject to the requirements of the Federal Rules of Civil Procedure and the Court's
 4 Local Rules.

5 C. Settlement

6 The parties engaged in settlement discussions prior to the filing of this lawsuit.
 7 As earlier noted, the parties have agreed on ADR Procedure No. 3 (private dispute
 8 resolution proceeding). The parties believe further discussions would be appropriate
 9 after more discovery takes place.

10 D. Trial Length

11 The parties estimate that the trial will take 12 court days, not including jury
 12 selection.

13 E. Other Parties

14 The parties do not anticipate at this time that other parties will be added but
 15 reserve their right to bring a motion to add parties under applicable substantive and
 16 procedural law.

17 F. Trial Type

18 The trial will be a trial by jury.

19 G. Other Issues Affecting Status or Management of the Case

20 None.

21 H. Proposals regarding Severance, Bifurcations or Other Ordering of Proof.

22 None.

23 I. Short Synopsis of Principal Issues of the Case.

24 Plaintiff alleges that he was damaged by Defendant's conduct which led to a
 25 SIM swap of his phone and the loss of almost \$24 million in cryptocurrency. Plaintiff
 26 alleges that Defendant breached its obligations to maintain the privacy of his personal
 27 information under the Federal Communications Act and in violation of Defendant's
 28 promises in its privacy policy. Plaintiff further alleges that Defendant was negligent

1 in not maintaining adequate security and in hiring personnel who either cooperated
2 with the perpetrators of the SIM swap or were allowed by AT&T to bypass the
3 security that AT&T had allegedly placed on its systems to protect its customers.

4 Defendant disputes Plaintiff's allegations and denies any liability to Plaintiff.
5 Defendant argues that the criminal hackers who allegedly swapped Mr. Terpin's SIM
6 card into a phone controlled by the hackers, and then used his SIM card to steal
7 cryptocurrency, needed for multiple steps to be taken by various parties, including
8 Plaintiff, to allegedly allow the SIM swap and resulting theft. Defendant argues that
9 it does not control the acts of criminal hackers and that it at all times maintained
10 reasonable security measures and disclosed to customers the limits of those security
11 measures. Accordingly, Defendant argues that any alleged loss is due to factors other
12 than Defendant and outside of Defendant's control, including the negligence or
13 intentional misconduct of other actors or Plaintiff's own negligence.

14 J. Amendment of Pleadings

15 Defendant has brought three motions to dismiss in this matter. At issue in this
16 matter are the six remaining claims of Plaintiff's Second Amended Complaint. *See*
17 Section I(B), *supra*. The parties reserve their right to further amend the pleadings
18 (and challenge any request to amend) under applicable substantive and procedural
19 law consistent with the Court's rulings.

20 K. Resolution of Matters by Motion

21 The parties anticipate that they may each bring a motion for summary
22 judgment on all or a portion of the claims of Plaintiff's Second Amended Complaint.
23 Because discovery has not been conducted in this matter, the parties are unable to
24 provide further specificity regarding the potential motions at this time.

IV. Parties' Recommendations and Orders for Final Scheduling Orders

The parties respectfully submit the following recommendations regarding the final scheduling order to be entered by the Court based on the Court's template for Scheduling of Trial and Pre-Trial Dates.

Event	Date
Jury Trial Estimated length 12 court days	June 7, 2022, 9:00 a.m.
Last Date to File Final Trial Exhibit Stipulation	June 2, 2022
Hearings on Motions in Limine	May 31, 2022, 1:30 p.m.
Pretrial Conference; Deadline to File Motions in Limine	May 16, 2022
Deadline to File: <ul style="list-style-type: none"> Proposed Pretrial Conference Order; Memoranda and Contentions of Fact and Law; Joint Witness List; Join Exhibit List and Exhibit Stipulation; Proposed Jury Instructions/Disputed Jury Instructions Proposed Voir Dire Questions; Joint Statement of the Case; Joint Report re Settlement 	May 9, 2022
Last Date for Hearing Motions	April 18, 2022

Event	Date
Last Date to Conduct Settlement Conference	April 11, 2022
Expert Discovery Cutoff	March 7, 2022
Percipient/Fact Discovery Cutoff	February 21, 2022
Last Date to Hear Motions to Amend Pleadings or Add Parties	April 5, 2021

The dates proposed herein were determined and calculated based on the proposed trial date using the Court's template. In the event that the Court selects a different date, the parties would propose that all the dates be adjusted according to the Court's template.

DATED: December 28, 2020

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

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TERPIN

DATED: December 28, 2020

GIBSON DUNN & CRUTCHER

By: /s/ Marcellus McRae
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Mobility, LLC